IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 25TH MAY 2007 / 4TH JYAISHTA 1929

WP(C).No. 5142 of 2007(K)

PETITIONERS:
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1. SHANAVASKHAN, S/O. SIDHIK,
CHIRAYIL HOUSE, THALAYOLAPARAMBU KARA,
VADAYAR VILLAGE, VAIKOM TALUK, REP.BY POWER OF
ATTORNEY HOLDER, SIDHIK.

2. SIDHIK, S/O. KAYI,
CHIRAYIL HOUSE, THALAYOLAPARAMBU KARA,
VADAYAR VILLAGE, VAIKOM TALUK.

BY ADV. SRI.KKM.SHERIF

RESPONDENTS:

HASSANKUNJU,
KURATTAMPARAMBU HOUSE, THALAYOLAPARAMBU KARA,
VADAYAR VILLAGE, VAIKOM TALUK.

BY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 25/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) NO: 5142/2007

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE POWER OF ATTORNEY DT. 13/2/99.

EXT.P2. COPY OF THE IA NO. 972/04.

EXT.P3. COPY OF THE IA NO. 1725/2006.

EXT.P4. COPY OF THE ORDER DT. 16/12/2006 IN IA NO. 1725/2006.

True copy

M.N.KRISHNAN, J.

WP(C)No.5142 OF 2007 K

Dated this the 25th May, 2007.

JUDGMENT

This writ petition is filed seeking to quash the order Ext.P4. Writ petitioners who are the plaintiffs moved I.A.1725/2006 in O.S.34/2003 before the Munsiff Court, Vaikom for the appointment of a commissioner with the help of a surveyor to identify and measure the properties with reference to the respective documents of the parties. The trial court dismissed the application on the ground that on an earlier occasion that prayer was allowed and it has been suppressed in the later application. Though the respondent is served, he has not entered appearance. From the nature of the contentions in the suit it is absolutely necessary to have a proper plan with the assistance of the surveyor with reference to the title deeds of the parties. So, in order to determine the controversy between the parties it is imperative to have a plan and report. It is true that there was laches on the part of the plaintiffs not to proceed properly in spite of an earlier order. But that shall not militate against them. In order to meet the ends of justice it is really necessary for the issuance of a commission. Therefore, the order under challenge, i.e Ext.P4 is set aside and I.A.1725/06 is allowed and the

trial court is directed to appoint a commissioner on usual terms and parties be permitted to file work memo before the commissioner for noting the particulars required by them with reference to their respective contentions. Writ petition is disposed of accordingly.

M.N.KRISHNAN
Judge

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